IN THE SUPREME COURT OF GUAM

MARGARET P. PELOWSKI
Plaintiff-Appellee

vs.

HENRY F. TAITANO and JOSEPHINE C. TAITANO
Defendants-Appellants

AMENDED OPINION

(This opinion was amended pursuant to the attached Order filed January 2, 2001)

Filed: December 29, 2000

Cite as: 2000 Guam 34

Supreme Court Case No. CVA99-051
Superior Court Case No. CV1077-94

Appeal from the Superior Court of Guam
Argued and submitted on November 20, 2000
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice (Acting)[1], JOHN A. MANGLONA, Designated Justice, and ROBERT TORRES, Justice *Pro Tempore*

CARBULLIDO, J.:

[1] Margaret P. Pelowski (hereinafter "Ms. Pelowski"), filed a quiet title action in the Superior Court of Guam against Henry F. and Josephine C. Taitano (hereinafter "Taitanos"). Both parties filed motions for summary judgment. The questions before the Court include: (1) was Ms. Pelowski precluded from bringing the quiet title action because she failed to bring the claim as a compulsory counterclaim in a prior suit, and (2) were the Taitanos bonafide purchasers of the property and therefore not bound by any subsequent judgment. The trial court denied the Taitanos' motion for summary judgment and granted Ms. Pelowski's motion for summary judgment, holding that Ms. Pelowski was the owner of the property. Taitanos appeal. We affirm.

I. BACKGROUND

[2] This litigation involves a dispute over the ownership of real property, Lot 5362-4-R2, Mangilao (hereinafter the "Property"). Both Ms. Pelowski, Plaintiff-Appellee, and the Taitanos, Defendants-Appellants, assert ownership of the Property.

[3] On February 12, 1980, Maria Pangelinan, the then owner of the Property, transferred the Property to Margaret and Jack Pelowski (hereinafter "Pelowskis") via a deed of gift. The deed was recorded with the Department of Land Management (hereinafter "Land Management") the following

[1] The full time justices, including the Chief Justice and Associate Justice P.C. Siguenza, recused themselves from deciding this matter. Justice F. Philip Carbullido, as senior member of the panel, was designated as the acting Chief Justice.

day. Shortly thereafter, Maria Pangelinan passed away. On February 2, 1988, Jack Pelowski conveyed his interest in the Property to Margaret Pelowski. This conveyance was duly recorded with Land Management. Ms. Pelowski was issued a Certificate of Title to the lot on March 21, 1988. The Pelowskis then moved to Las Vegas, Nevada.

[4] On July 29, 1988 Jose Pangelinan (hereinafter "Mr. Pangelinan"), Maria Pangelinan's surviving brother, filed a complaint in the Superior Court (case number CV 0626-88) challenging the February 12, 1980 transfer of the Property to the Pelowskis on the ground of undue influence, and asserting ownership of the Property under a joint will allegedly executed between Mr. Pangelinan and his late-sister Maria A. Pangelinan. *See* Appellant's Excerpts of Record, tab 83. Mr. Pangelinan also recorded a Notice of Lis Pendens with Land Management on the same day. After a hearing, the Superior Court of Guam granted a default judgment in favor of Mr. Pangelinan. Mr. Pangelinan recorded the judgment at Land Management on April 10, 1990. The judgment was entered on the docket on April 16, 1990. The default judgment directed Land Management to cancel Ms. Pelowski's Certificate of Title and to issue a new one in the name of Mr. Pangelinan. On June 13, 1991, Mr. Pangelinan obtained a Certificate of Title for the Property.

[5] On April 26, 1990, the Pelowskis filed a motion to vacate the default judgment, which was granted in an Order dated December 17, 1990. Finally, on May 19, 1993, the Superior Court filed an Order of Dismissal in CV 0626-88, dismissing the case for failure to prosecute and thereby not disturbing the 1980 transfer of the Property from Maria Pangelinan to the Pelowskis.

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[6] On April 30, 1990, after the default judgment was entered in favor of Jose Pangelinan in the aforementioned case, CV0626-88, but before the Order of Dismissal was entered in favor of the Pelowskis, Jose Pangelinan transferred the lot to the Taitanos. The Taitanos obtained a Certificate of Title to the lot on June 13, 1991, which is the most recent certificate of title issued for the Property.

[7] On July 22, 1994, Ms. Pelowski filed the current action against the Taitanos in the Superior Court (case number CV1077-94) seeking to quiet title to the Property in herself on a constructive notice theory. *See* Appellant's Excerpts of Record, tab 1. On the same day, Ms. Pelowski filed a Notice of Lis Pendens with Land Management. The Superior Court granted Ms. Pelowski's summary judgment motion and denied the Taitanos' cross-motion for summary judgment. The Taitanos timely filed a Notice of Appeal.

II. DISCUSSION

[8] This court has jurisdiction over the appeal of a final judgment of the Superior Court pursuant to Title 7 GCA §§ 3107 and 3108 (1994).

[9] We review a trial court's grant or denial of summary judgment *de novo*. *See Paulino v. Biscoe*, 2000 Guam 13, ¶ 12; *Iizuka Corp. v. Kawasho Int'l*, 1997 Guam 10, ¶ 7. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Guam R. Civ. P. 56(c) (1995).

[10] In the instant case, the parties do not argue that there are any genuine issues as to a material fact. Accordingly, we proceed to determine whether summary judgment for Ms. Pelowski was proper as a matter of law.

A. The claim to quiet title was not a compulsory counterclaim that Ms. Pelowski was required to bring in CV0626-88.

[11] The Taitanos argue that Guam Rules of Civil Procedure 13 and 19 preclude Ms. Pelowski from bringing the instant quiet title action. According to the Taitanos, because they were necessary parties to CV0626-88 as defined in GRCP 19, Ms. Pelowski was required to include them in the case.[2] Further, after adding the Taitanos as parties, Ms. Pelowski was required to assert a compulsory counterclaim against them to quiet title, as required under Guam R. Civ. P. 13. Because Ms. Pelowski failed to raise the compulsory counterclaim in CV0626-88, the Taitanos assert that Ms. Pelowski was barred from pursuing the instant quiet title action. The trial court disagreed, determining that Ms. Pelowski's claim to quiet title against the Taitanos was not a compulsory counterclaim, and that the Taitanos were not necessary parties to CV0626-88. We agree that the claim to quiet title was not a compulsory counterclaim in CV0626-88.

[12] As the trial court correctly recognized, the Guam Rules of Civil Procedure relevant here mirror the corresponding Federal Rules of Civil Procedure, therefore, cases that interpret and apply Fed. R. Civ. P. 13 are instructive. *Compare* Fed. R. Civ. P. 13(a) *with* GRCP 13(a). Guam Rule of Civil Procedure 13(a) provides:

[2] Rule 19 "requires joinder when the presence of the party to be joined is essential to the litigants' complete relief, or when the party to be joined must be present to protect its own or another party's interest." *See Boulevard Bank. Nat'l. Ass'n* v. *Phillips*, 15 F.3d 1419, 1422 (7th Cir. 1994) (setting forth the requirements for joinder of a non-party under Federal Rules of Civil Procedure 19, of which GRCP 19 mirrors).

> **Rule 13(a). Compulsory Counterclaims**. A pleading shall state as a counterclaim any claim which, at the time of serving the pleading the pleader has against any opposing party, if it arises out of any transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction . . . .

GRCP 13(a) (1995).

[13] Under the language of Guam R. Civ. P. 13(a), a counter claim is compulsory if it "arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim". The definition of "transaction or occurrence" focuses on whether there is a "logical relationship" between the claim and the counterclaim. *See Harris v. Steinem*, 571 F.2d 119, 123 (2d Cir. 1978) (citing *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610, 46 S.Ct. 367 (1926)); *see also Pochiro v. Prudential Ins. Co. of America*, 827 F.2d 1246, 1249 (9th Cir. 1987).

[14] The rationale underlying rule 13 is to avoid multiplicity of suits. *See Union Paving Co. v. Downer Corp.*, 276 F.2d 468, 470 (9th Cir. 1960) (citation omitted). Consistent with this rationale, courts take a liberal view in determining whether a counterclaim is compulsory under rule 13. *See Kinney v. Allied Home Builders, Inc.*, 403 So.2d 440, 442 (Fla. Dist. Ct. App. 1981). Failure to assert a compulsory counterclaim bars the party from litigating the claim in a later action. *See Union Paving*, 276 F.2d at 470 (citations omitted); *Harris*, 571 F.2d at 122.

[15] The current claim to quiet title was not a compulsory counterclaim in CV0626-88. In CV0626-88, Mr. Pangelinan claimed that the 1980 transfer of the lot from Maria Pangelinan to the Pelowskis was void for undue influence. Further, Mr. Pangelinan claimed ownership under a joint will. The events relevant to the current quiet title action (i.e., the events surrounding the transfer of the lot from Mr. Pangelinan to the Taitanos) did not arise out of the "same transaction or

occurrence" that was the subject matter of either Mr. Pangelinan's claims of ownership under the joint will or his claim challenging the 1980 transfer to the Pelowskis. The events and facts relevant to a determination of Ms. Pelowski's instant claim of ownership are not logically connected to the events and facts relevant to Mr. Pangelinan's claims in CV0626-88.

[16] Because the current claim to quiet title was not a compulsory counterclaim in CV0626-88, Ms. Pelowski was not barred from bringing the instant action. The trial court did not err in denying the Taitanos' cross-motion for summary judgment.

[17] We find it unnecessary and therefore decline to address whether the Taitanos were indispensable parties to CV0626-88 because the claim to quiet title was not a compulsory counterclaim in CV0626-88 and Ms. Pelowski was not precluded from bringing the instant suit.

B. Taitanos were not bona fide purchasers of the property.

[18] The Taitanos argue that they were bona fide purchasers of the Property, and as such, they were not bound by the judgment rendered in CV0626-88. We disagree.

[19] Under 7 GCA. § 14103, a party to a suit may file a notice of lis pendens and such notice acts to put others on constructive notice of the pendency of the action. The section provides:

> **§14103. Notice of Lis Pendens.** In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing an answer, when affirmative relief is claimed in such answer, or at anytime afterwards, may record in the Department of Land Management, a notice of the pendency of the action containing the names of the parties and the object of the action or defense, and a description of the property affected thereby. From the time of filing such notice for record only, *shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action*, and only of its pendency against parties designated by their real names.

Title 7 GCA § 14103 (1994) (emphasis added).

[20] Mr. Pangelinan filed a notice of lis pendens on the date he filed the complaint in CV0626-88. A party must comply with the lis pendens statute for the notice of lis pendens to effectively impart constructive notice. The statute requires that the notice of lis pendens "contain[ ] the names of the parties and the object of the action or defense, and a description of the property affected thereby." 7 GCA § 14103. The notice of lis pendens filed by Mr. Pangelinan in CV0626-88 contained the information required under 7 GCA § 14103.

[21] Constructive notice which is afforded by the recording of a notice of lis pendens "is notice that an action which affects the title or right of possession of designated real property has been instituted and is pending. . . . When however, the action wherein the notice is filed ceases to be pending and is terminated, the notice of its pendency has fully performed its office and may not be relied upon to afford constructive notice that a similar action may subsequently be instituted." *Garcia v. Pinhero*, 22 Cal.App.2d 194, 196, 70 P.2d 675 (Cal Dist. Ct. App. 1937).[3]

[22] Constructive notice of the pendency of an action continues throughout the time necessary for the filing of an appeal and during the time an appeal is taken. *See id.*; *see also* Title 7 GCA § 26707 (1994) ("An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.")

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[3] Guam's lis pendens statute was modeled after California Code of Civil Procedure §409 as it existed in 1953. The *Garcia* court interpreted California Civil Code §409, of which 7 GCA § 14103 was taken.

[23] Other jurisdictions similarly hold that a notice of lis pendens effectively imparts constructive notice of the pendency of an action through the period by which an appeal is taken or the time for appeal has passed. *See e.g. Hidden Meadows Development Co. v Mills*, 590 P.2d 1244, 1247 (Utah 1979); *Ashworth v. Hankins*, 408 S.W.2d 871, 873-74 (Ark. 1966); *Oldewurtel v. Redding*, 421 N.W. 2d 722, 728 (Minn. 1988).

[24] The policy underlying the lis pendens doctrine is the need, in the interest of the proper administration of justice, "to keep the subject-matter of the litigation within the control of the court, and to render the parties powerless to place it beyond the reach of the final judgment." *Roberts v. Cardwell*, 157 S.W. 711, 713 (Ky. 1913); *see also Ashworth*, 408 S.W.2d at 873. Where the ownership of property remains subject to further litigation it is incumbent to "preserve the property [so] that the [very] purpose of the pending suit may not be defeated by successive alienations and transfers of title." *Ashworth*, 408 S.W. 2d at 873 (internal quotations omitted) (citation omitted). A litigant should be forbidden from "giv[ing] rights to others, [while the opportunity for further review remains], so as to affect the proceedings of the court then progressing to enforce those rights." *Id*. (internal quotations omitted) (citation omitted).

[25] Therefore, we interpret section 14103 to impart constructive notice through the period for which an appeal may be taken or the time for appeal has passed. Accordingly, we hold that the notice of lis pendens filed in CV0626-88 effectively put the Taitanos on constructive notice of the pendency of the action. Mr. Pangelinan conveyed the Property to the Taitanos fourteen days after the default judgment in CV0626-88 was entered on the docket. The time allowed to appeal from the default judgment was thirty days. *See* D. Guam R. App. P. 4(a). At the time Mr. Pangelinan transferred the property to the Taitanos, the time to file an appeal had not elapsed. Thus, the Taitanos

took the Property with constructive notice of the pendency of CV0626-88.

[26] A purchaser of property that is the subject of litigation who has constructive notice of the pendency of the litigation is bound by the judgment rendered. *See Morioka v. I & F Corp. Guam*, 1991 WL 255842 & 3, Civ. No. 91-00027A (D. Guam App. Div. Nov. 18, 1991) (citing *Kendall Brief Co. vs. Superior Court*, 60 Cal.App.3d 426 (1976)); *Hidden Meadows Development Co.*, 590 P.2d at 1248 (citations omitted); *see also Montgomery Ward Development Corp. v. Juster*, 932 F.2d 1378, 1383 (11th Cir, 1991).

[27] Because the Taitanos took the property with constructive notice of the CV0626-88 and of Ms. Pelowski's interest, the Taitanos are bound by the judgment rendered in CV0626-88.

C. Taitanos were not protected by Guam's Land Title Registration Law.

[28] We now address the Taitanos claim that they are entitled to protections afforded holders of certificates of title under Guam's Land Title Registration Law, specifically 21 GCA § 29142. That section provides:

> **§ 29142. Conclusiveness of Certificate of Actions of Ejectment or Partition or Possession.** In any action or proceeding brought for ejectment, partitions, or possession of land, the certificate of title of a registered owner shall be held in every court to be conclusive evidence, except as herein otherwise provided, that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described, and that such registered owner is entitled to the possession of said land.

Title 21 GCA § 29142 (1994).

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[29] The Taitanos claim that because they are holders of a certificate of title to the lot at issue, this certificate is conclusive evidence of ownership as provided in 21 GCA § 29142. We disagree. The protections available under Guam's Land Title Registration Law, 21 GCA § 29101, *et. seq.*, are afforded generally to two classes of owners, initial registrants and bona fide purchasers. Because the Taitanos do not fall under either class, they cannot benefit from 21 GCA § 29142.

[30] The adoption of Guam's Land Title Registration Law (hereinafter "Registration Law") created a Torrens System, *see Wells v. Lizama*, 396 F.2d 877, 879 (9th Cir. 1968), which is a "system of judicial registration of titles . . . [intended to] 'simplify, quicken and cheapen the transfer of real estate and to render titles safe and indefeasible.'" *Pioneer Abstract & Title Guaranty Co. v. Feraud*, 91 Cal. App. 278, 285, 267 P. 134, 137 (Cal. Dist. Ct. App. 1928) (citation omitted). This intent is "accomplished by the means of registration of title and the use of certificates which conclusively show the state of the title at all times." *Id.* The Torrens System, as enacted in Guam, provides for a scheme whereby those persons who claim an interest in property may file a petition with the Superior Court of Guam, *see* Title 21 GCA § 29105 (1994), requesting that the court declare the applicant be deemed owners of the land. *See* Title 21 GCA § 29112 (1994). Upon the service of proper notice of the petition, the court is charged with holding a hearing to determine the owner of the property, whether he be the applicant or not, and to have title to the land registered in that person's name if he so requests. *See* Title 21 GCA § 29115 (1994). The court issues a decree declaring the owners of the property and ordering the registration of the property, and such decree is to be registered with the registrar who is charged with issuing a certificate of title for the land. *See id.*; *see also* Title 21 GCA § 29116 (1994). The decree is effective to quiet title to the registered land and is final and conclusive as against "the rights of all persons, known and unknown, to assert

any estate, interest, claim, lien, or demand of any kind or nature whatsoever, against the land so ordered registered or any part thereof, except only as in [the Registration Law] provides." Title 21 GCA § 29117 (1994). A transfer of registered land is deemed registered where a new certificate of title is issued to the transferee. *See* Title 21 GCA § 29133 (1994).

[31] The provisions of the Registration Law clearly protect initial registrants. *See* 21 GCA § 29117 (1994) (providing that an initial decree of registration is conclusive as against any other interests or claims to the land). This broad protection is afforded because all persons who claim an interest in the property are put on notice of the initial registration proceeding and are given the opportunity to assert their claims. *See* 21 GCA §§ 29112, 29115 (1994). At the time of the initial registration, the court determines, as to all persons before it, the owner or owners of the land. Thus, initial registrants are determined after hearing all claimants asserting competing interests to the land. Only after the court determines ownership as between these individuals and orders the land to be registered and the first certificate of title issued does the land fall under the protections of the Registration Law. *See* 21 GCA § 29116 (1994).

[32] There is no similar judicial process specifically allowed under the Registration Law by which later transferees are determined to be owners as against all other interests, and of which new certificates of title are issued to these transferees after hearing competing claims. *Cf*. 21 GCA § 29133 (1994) (describing that transfers of registered property are automatically considered registered after the transferee is issued a new certificate of title and the certificate is marked by the registrar with information regarding where the original certificate may be found). Even though the Registration Law does not specifically allow a similar judicial process for the determination of the ownership of later transferees against other interests, the Registration Law nevertheless protects such

transferees, as holders of certificates of title, where they took the property in good faith and for value. *See Taitague v. First Island Industry Inc.*, CV 88-00047A, 1990 WL 320752, ** 2 (D. Guam App. Div. Jan. 26, 1990); *Cf*. 21 GCA §29133 (describing the transfers of registered property are automatically considered registered after transferee is issued a new certificate of title and the certificate is marked by the registrar with information regarding where the original certificate may be found). In *Taitague*, the Appellate Court held that "a properly issued certificate of title in the name of *subsequent bona fide purchaser for value* is irrebuttably presumed to be evidence of ownership." *Id*. (emphasis added).

[33] The Registration Law's systematic emphasis on the protection of bona fide purchasers confirms the *Taitague* ruling. For example, the title of a registered owner, who has taken bona fide for valuable consideration, or of any person bona fide claiming through or under him, may not be attacked in cases involving fraud. *See* 21 GCA §29138 (1994). Moreover, a deed or other instrument registered, which is forged, or executed by a person under legal disability, is deemed void, but nevertheless, does not affect the title of a registered owner, who has taken bona fide for valuable consideration. *See* 21 GCA §29139 (1994). Additionally, "no unregistered estate, interest, power, right, claim, contract or trust" may prevail against the title of a registered owner taking bona fide for valuable consideration or any person bona fide claiming under him. 21 GCA §29140. Finally, a person may challenge an outstanding certificate of title, however, a person who holds a certificate of title for value and in good faith may not be affected by a court ruling. *See* 21 GCA §29195 (1994).

[34] To avail oneself of the protections of the Registration Law, a person must either be an initial registrant or a bona fide purchaser.[4] The Taitanos were not initial registrants. Moreover, because, as we have concluded above, the Taitanos were put on constructive notice of the pendency of CV0626-88 and of Ms. Pelowski's interest by virtue of the properly recorded notice of lis pendens, the Taitanos were not bona fide purchasers. *See Morioka*, 1991 WL 255842 at ** 3 ("To become a bona fide purchaser of property one must acquire title through payment of value, in good faith, and without actual or constructive notice of another's rights.") (citing *Sieger v. Standard Oil Co.*, 155 Cal.2d 649 (1957)). Accordingly, the Taitanos are not entitled to the protection of 21 GCA § 29142 (1994).

III. CONCLUSION

[35] Ms. Pelowski's instant claim to quiet title was not a compulsory counterclaim in CV0626-88 because the claim to quiet title did not arise out of the same transaction or occurrence as the claims asserted in CV0626-88. Therefore, the trial court did not err in denying the Appellant's cross motion for summary judgment. We further hold that summary judgment for Ms. Pelowski was proper as a matter of law. At the time the Taitanos purchased the property, the time by which the Pelowskis could appeal the default had not passed. At the time of the purchase, a properly filed notice of lis pendens was on record. Thus, the Taitanos had constructive notice of CV0626-88 and of Ms. Pelowskis interest and are therefore bound by the judgment in CV0626-88. The trial court

[4] We reserve whether there are other classes protected by the Registration Law. We only conclude today that the Taitanos are not within the recognized classes protected by the Registration Law.

did not err in granting summary judgment for Ms. Pelowski.

IV. ORDER

[36] The certificate of title issued to the Taitanos shall be canceled and a new certificate of title shall be issued to Ms. Pelowski. **AFFIRMED AND REMANDED WITH INSTRUCTIONS**.

JOHN A. MANGLONA
Designated Justice

ROBERT J. TORRES
Justice *Pro Tempore*

F. PHILIP CARBULLIDO
Chief Justice (Acting)

IN THE SUPREME COURT OF GUAM

MARGARET P. PELOWSKI, **Plaintiff-Appellee,** vs. **HENRY F. TAITANO and JOSEPHINE C. TAITANO,** **Defendants-Appellants.**	**Supreme Court Case No.** CVA99-051 **Superior Court Case No.** CV1077-94 **ORDER** **Filed: January 2, 2001, 3:11 P.M.**

This matter comes before the court pursuant to the opinion filed in the above-captioned matter, *Pelowski v. Taitano*, 2000 Guam 34, filed December 29, 2000. It has come to the court's attention that the following portions of the opinion were omitted prior to publication:

1. [34] To avail oneself of the protections of the Registration Law, a person must either be an initial registrant or a bona fide purchaser.[4] The Taitanos were not initial registrants. Moreover, because as we have concluded above, the Taitanos were put on constructive notice of the pendency of CV0626-88 and of Ms. Pelowski's interest by virtue of the properly recorded notice of lis pendens, the Taitanos were not bona fide purchasers. *See Morioka*, 1991 WL 255842 at **3 ("To become a bona fide purchaser of property one must acquire title through payment of value, in good faith, and without actual or constructive notice of another's rights.") (citing *Sieger v. Standard Oil Co.*, 155 Cal. 2d 649 (1957)). Accordingly, the Taitanos are not entitled to the protection of 21 GCA § 29142 (1994).

2. FN4: We reserve whether there are other classes protected by the Registration Law. We

only conclude today that the Taitanos are not within the recognized classes protected by the Registration Law.

The court is reissuing the opinion with the same citation number, 2000 Guam 34, as attached with the revisions. The attached revised opinion shall replace the opinion issued on December 29, 2000.

SO **ORDERED**, this 2nd day of January, 2001.

JOHN A. MANGLONA
Designated Justice

ROBERT J. TORRES
Justice Pro-Tempore

F. PHILIP CARBULLIDO
Chief Justice (Acting)